



Marvin S. Fertel
PRESIDENT AND CHIEF EXECUTIVE OFFICER

April 12, 2012

The Honorable Bob Perciasepe
Deputy Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

2012 APR 17 AM 11:15
OFFICE OF THE
EXECUTIVE SECRETARIAT
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Subject: EPA Region 6 Decision on Goliad County, Texas, Uranium Mining Project Aquifer
Exemption Application

Dear Deputy Administrator Perciasepe:

The Nuclear Energy Institute (NEI)¹ would like to express our concern about a recent decision by the Region 6 office of the U.S. Environmental Protection Agency (EPA), which we understand that you are currently reviewing. NEI believes that EPA Region 6's departure from established EPA guidelines for reviewing aquifer exemption requests will have a prohibitive effect on domestic mining operations and a significant adverse impact on our industry's ability to source uranium domestically.

We respectfully ask that you review the EPA Region 6 decision to ensure that Region 6 evaluates projects based on existing guidelines and regulations. We are very concerned that the new standards unilaterally imposed by Region 6 will jeopardize future uranium mining in the State of Texas and limit the potential of one of our most promising domestic supplies of uranium. We also ask that you reaffirm with other EPA regional offices their obligation to follow existing EPA guidelines and regulations regarding aquifer exemptions.

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees and other organizations and individuals involved in the nuclear energy industry.

Nuclear energy is America's largest source of clean, reliable, baseload electricity, producing no greenhouse gases or air pollutants during operations. Currently, nuclear power plants produce nearly 20 percent of U.S. electricity and nearly three-quarters of our emission-free generation.

Unfortunately, recent decisions by EPA's Region 6 office could have a prohibitive effect on efforts to expand the domestic uranium industry. The Region 6 office is attempting to apply a new standard to evaluate uranium projects—one neither supported by EPA guidance nor precedent in Region 6 or other EPA Regions. The issue relates to the approval of an aquifer exemption, one of the final steps in the permitting process.

The EPA guidelines for approving aquifer exemptions were previously used to approve more than 30 projects in Texas over the past 30 years. Yet, the Region 6 office recently decided to apply its own new standard to a uranium mining project in Goliad County, Texas, effectively stopping it from going forward.

*Guidance for Review and Approval of State Underground Injection Control Programs and Revisions to Approved State Programs, GWPB Guidance #34,*² is clear regarding evaluation of requests to exempt aquifers from drinking water protections so that mining projects can proceed: (1) the exempted area does not currently serve as a source of drinking water and (2) it cannot now, and will not in the future, serve as a source of drinking water because of the presence of minerals or hydrocarbons expected to be commercially producible. To demonstrate that a particular area meets these requirements, applicants must, respectively, (1) perform a water well survey covering the exempted area and a buffer of one-quarter mile from the exempted area's boundary, and (2) provide a history of mineral production in the area.

In the case of the Goliad County, Texas, uranium mining project, EPA Region 6 is requiring modeling analysis in addition to a well survey and history—a unilateral departure from the established EPA guidance. Moreover, the requested modeling is not defined, and Region 6 says that it will review whatever modeling results are submitted to determine if more modeling is needed, creating an open-ended regulatory process.³ In this way, the EPA Region 6 process introduces considerable uncertainty into well-known guidance.

The new standards unilaterally imposed by EPA Region 6 will jeopardize future uranium mining in Texas and limit the potential of one of this country's most promising domestic supplies of uranium. Moreover, this effect will be compounded if one or more additional EPA regional

² From Victor J. Kimm, Director, Office of Drinking Water (WH-550) to Water Division Directors, Regions I-X, effective July 5, 1984, especially *Attachment 3, Guidelines for Reviewing Aquifer Exemption Requests*.

³ Letter from Miguel I. Flores, Director, Water Quality Protection Division, U.S. Environmental Protection Agency, Region 6, to Susan Jablonski, Director, Radioactive Materials Division, Texas Commission on Environmental Quality, RE: Application to Exempt a Portion of the Goliad Formation, Goliad County, July 1, 2011.

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offices unilaterally decide to impose their own evaluation criteria counter to established EPA guidance.

The nuclear industry believes that the result will be a serious and unnecessary impediment to expanding the domestic uranium industry. The overall result will adversely impact U.S. mining operations and unnecessarily restrict domestic job creation.

In conclusion, we respectfully ask that you review the EPA Region 6 decision to ensure that Region 6 evaluates projects based on existing guidelines and regulations. We also ask that you reaffirm with other EPA regional offices their obligation to follow existing EPA guidelines and regulations regarding aquifer exemptions.

If you have any questions, please feel free to contact me directly, or William Skaff on the NEI staff (at 202.739.8036 or wgs@nei.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin S. Fertel". The signature is fluid and cursive, with the first name "Marvin" being more prominent.

Marvin S. Fertel

c. Lisa Jackson
Administrator, U.S. Environmental Protection Agency



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